

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 800 By: Coleman of the Senate
3 and
4 Dempsey of the House
5

6 [alcoholic beverages - license - election -
7 effective date]
8

9 AMENDMENT NO. 1. Strike the stricken title, enacting clause, and
10 entire bill and insert:

11 "An Act relating to alcoholic beverages; amending 37A
12 O.S. 2021, Section 6-103, as last amended by Section
13 1, Chapter 200, O.S.L. 2023 (37A O.S. Supp. 2023,
14 Section 6-103), which relates to prohibited acts of
15 retail spirits licensees; expanding exemption for
16 offering or furnishing any prize, premium, gift or
17 similar inducement to a consumer in connection with
18 the sale of alcoholic beverages; amending 37A O.S.
19 2021, Section 6-104, which relates to prohibited acts
20 of wholesaler licensees; prohibiting any amount of
21 spirits or wines to be sold to any licensee below a
22 certain price; providing exemptions; amending 37A
23 O.S. 2021, Section 6-108, which relates to prohibited
24 acts of holders of retail wine or retail beer
licenses; expanding exemption for offering or
furnishing any prize, premium, gift or similar
inducement to a consumer in connection with the sale
of beer or wine; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 37A O.S. 2021, Section 6-103, as
2 last amended by Section 1, Chapter 200, O.S.L. 2023 (37A O.S. Supp.
3 2023, Section 6-103), is amended to read as follows:

4 Section 6-103. A. No retail spirits licensee shall:

5 1. Purchase or receive any alcoholic beverage other than from a
6 wine and spirits wholesaler, beer distributor, winery or small
7 brewer self-distribution licensee who elects to self-distribute;

8 2. Suffer or permit any retail container to be opened, or any
9 alcoholic beverage to be consumed on the licensed premises, except
10 when serving samples as authorized by Section 2-109 of this title or
11 otherwise permitted by law; provided, the licensee shall not permit
12 any alcoholic beverage content or retail container unsealed in
13 connection with sampling authorized by Section 2-109 of this title
14 to remain on the licensed premises at the close of business on that
15 day, excluding spirits;

16 3. Sell any alcoholic beverages at any hour other than between
17 the hours of 8:00 a.m. and midnight Monday through Saturday, and
18 shall not be permitted to be open on Thanksgiving Day or Christmas
19 Day; provided, a county may, pursuant to the provisions of
20 subsections B and C of Section 3-124 of this title, elect to allow
21 such sales between the hours of noon and midnight on Sunday. Retail
22 spirits licensees shall be permitted to sell alcoholic beverages on
23 the day of any General, Primary, Runoff Primary or Special Election
24 whether on a national, state, county or city election, provided that

1 the election day does not occur on any day on which such sales are
2 otherwise prohibited by law;

3 4. Sell spirits in a city or town, unless such city or town has
4 a population in excess of two hundred (200) according to the latest
5 Federal Decennial Census;

6 5. Sell any alcoholic beverage on credit; provided, that
7 acceptance by a licensee of a cash or debit card or a nationally
8 recognized credit card in lieu of actual cash payment does not
9 constitute the extension of credit; provided, further, as used in
10 this section:

11 a. "cash or debit card" means any instrument or device
12 whether known as a debit card or by any other name,
13 issued with or without fee by an issuer for the use of
14 the cardholder in depositing, obtaining or
15 transferring funds from a consumer banking electronic
16 facility, and

17 b. "nationally recognized credit card" means any
18 instrument or device, whether known as a credit card,
19 credit plate, charge plate or by any other name,
20 issued with or without fee by an issuer for the use of
21 the cardholder in obtaining money, goods, services or
22 anything else of value on credit which is accepted by
23 over one hundred retail locations;

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1 6. Offer or furnish any prize, premium, gift or similar
2 inducement to a consumer in connection with the sale of alcoholic
3 beverages, except ~~that~~:

4 a. goods or merchandise included by the manufacturer in
5 packaging with alcoholic beverages or for packaging
6 with alcoholic beverages ~~shall not be included in this~~
7 ~~prohibition, but;~~ provided, that no wholesaler or
8 retailer shall sell any alcoholic beverage prepackaged
9 with other goods or merchandise at a price which is
10 greater than the price at which the alcoholic beverage
11 alone is sold; ~~provided, it shall not be considered~~
12 ~~inducement or a premium for a~~ nor shall a retail
13 spirits license holder selling wine, spirits, or beer
14 at a multiunit discount be included in this
15 prohibition,

16 b. retail spirits licensee to ~~have an advertised~~
17 advertise a price posted higher online than the shelf
18 price on the licensed premises,

19 c. retail spirits licensee offering retail packages at a
20 discount from retail price for individuals of specific
21 professions and occupations, current or former members
22 of the United States Armed Forces, at the discretion
23 of the licensee; no discount shall make the retail
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1 price lower than six-percent markup, as applicable in
2 Section 3-118 of this title; or

3 7. Pay for alcoholic beverages by a check or draft which is
4 dishonored by the drawee when presented to such drawee for payment;
5 and the ABLE Commission may cancel or suspend the license of any
6 retailer who has given a check or draft, as maker or endorser, which
7 is so dishonored upon presentation.

8 B. No retail spirits licensee shall permit any person under
9 twenty-one (21) years of age to enter into or remain within or about
10 the licensed premises unless accompanied by the person's parent or
11 legal guardian; provided, however, this restriction shall not apply
12 to an employee of a licensed beer distributor or wine and spirits
13 wholesaler who:

14 1. Is at least eighteen (18) years of age;

15 2. Is accompanied by a coworker at least twenty-one (21) years
16 of age; and

17 3. Enters for the sole purpose of merchandising or delivering
18 product to the licensee in the normal course of business.

19 SECTION 2. AMENDATORY 37A O.S. 2021, Section 6-104, is
20 amended to read as follows:

21 Section 6-104. No wine or spirits wholesaler licensee shall
22 sell or deliver, and no wine or spirits retail licensee shall
23 receive:

24 1. Any amount of spirits or wines to any licensee on Sunday; ~~or~~

1 2. Any amount of spirits or wines to any licensee on New Year's
2 Day, the Fourth of July, Thanksgiving Day or Christmas Day; or

3 3. Any amount of spirits or wines to any licensee at a price
4 less than fifteen percent (15%) above the wine and spirits
5 wholesaler's laid in cost of such spirit or wine; provided, this
6 provision shall not apply to any spirit or wine which the wine and
7 spirit wholesaler has discontinued or closed out from its brand
8 offerings in this state. For purposes of this section, "laid in
9 cost" shall mean the wine and spirit wholesaler's cost from the
10 supplier, less supplier support if any, plus any inbound freight
11 costs, handling costs, and taxes.

12 SECTION 3. AMENDATORY 37A O.S. 2021, Section 6-108, is
13 amended to read as follows:

14 Section 6-108. No holder of a Retail Wine License or a Retail
15 Beer License shall:

16 1. Purchase or receive any alcoholic beverage other than from a
17 wine and spirits wholesaler, beer distributor, winery or small
18 brewer self-distribution licensee;

19 2. Suffer or permit any retail container to be opened, or any
20 alcoholic beverage to be consumed on the licensed premises, except
21 when serving samples as authorized by Section 2-109 of this title or
22 as otherwise permitted by law; provided, the licensee shall not
23 permit any alcoholic beverages content or retail container unsealed
24 in connection with sampling authorized by Section 2-109 of this

1 title to remain on the licensed premises at the close of the
2 business on that day;

3 3. Sell any beer or wine at any hour other than between the
4 hours of 6:00 a.m. and 2:00 a.m. the following day, Monday through
5 Sunday. Retail wine and retail beer licensees shall be permitted to
6 sell beer and wine on the day of any General, Primary, Runoff
7 Primary or Special Election whether on a national, state, county or
8 city election;

9 4. Sell any beer and wine on credit; except as follows:

10 a. the acceptance by a grocery store, convenience store
11 or drug store of a cash or debit card, or a nationally
12 recognized credit card, in lieu of actual cash payment
13 does not constitute the extension of credit; provided,
14 further, as used in this section:

15 (1) "cash or debit card" means any instrument or
16 device whether known as a debit card or by any
17 other name, issued with or without fee by an
18 issuer for the use of the cardholder in
19 depositing, obtaining or transferring funds from
20 a consumer banking electronic facility, and

21 (2) "nationally recognized credit card" means any
22 instrument or device, whether known as a credit
23 card, credit plate, charge plate or by any other
24 name, issued with or without fee by an issuer for

1 the use of the cardholder in obtaining money,
2 goods, services or anything else of value on
3 credit which is accepted by over one hundred
4 retail locations, and

5 b. when the holder of a Retail Wine License, Retail Beer
6 License or Mixed Beverage License is a private
7 membership club, marina, golf course or country club
8 that normally charges food, drinks and other purchases
9 to the member's monthly dues account in the regular
10 course of business, in lieu of actual cash payment at
11 the time of purchase, such practice does not
12 constitute the extension of credit;

13 5. Offer or furnish any prize, premium, gift or similar
14 inducement to a consumer in connection with the sale of beer or
15 wine, except ~~that~~:

16 a. goods or merchandise included by the manufacturer in
17 packaging with beer or wine or for packaging with beer
18 or wine ~~shall not be included in this prohibition,~~ nor
19 shall a retail wine or retail beer license holder
20 selling wine or beer at a multiunit discount be
21 included in this prohibition; ~~but~~ provided, that no
22 retail wine or retail beer licensee shall sell any
23 beer or wine prepackaged with other goods or
24 merchandise at a price which is greater than the price

1 at which the alcoholic beverage alone is sold nor
2 shall a retail spirits license holder selling wine or
3 beer at a multiunit discount be included in this
4 prohibition, and

5 b. retail wine and retail beer licensees offering retail
6 packages at a discount from retail price for
7 individuals of specific professions and occupations,
8 current or former members of the United States Armed
9 Forces, at the discretion of the licensee; no discount
10 shall make the retail price lower than six-percent
11 markup, as applicable in Section 3-118 of this title;
12 or

13 6. Pay for beer or wine by a check or draft which is dishonored
14 by the drawee when presented to such drawee for payment; and the
15 ABLE Commission may cancel or suspend the license of any retailer
16 who has given a check or draft, as maker or endorser, which is so
17 dishonored upon presentation.

18 SECTION 4. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval."
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1 ENGROSSED SENATE
2 BILL NO. 800

By: Coleman of the Senate

3 and

4 Dempsey of the House

5
6 [alcoholic beverages - license - election -
7 effective date]
8

9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

10 SECTION 5. AMENDATORY 37A O.S. 2021, Section 2-105, is
11 amended to read as follows:

12 Section 2-105. A. A winemaker self-distribution license shall
13 authorize a licensed winemaker within or without this state which is
14 permitted by Article ~~XXVIII~~ XXVIII-A of the Oklahoma Constitution
15 and this section:

16 1. To distribute its wine directly to retail spirits, retail
17 wine and retail beer licensees, mixed beverage licensees, beer and
18 wine licensees, and restaurants in this state; and

19 2. If such a winemaker elects to do so, to sell and deliver its
20 wines directly to licensed retail package stores, mixed beverage
21 licensees, beer and wine licensees, and restaurants in this state in
22 full case lots only, and in accordance with the provisions of the
23 Oklahoma Alcoholic Beverage Control Act and such rules as the ABLE
24 Commission shall promulgate.

1 B. A winemaker either within or without this state that
2 annually produces no more than fifteen thousand (15,000) gallons of
3 wine may elect to sell and self-distribute the wine produced by such
4 winemaker directly to licensed retail package stores, mixed beverage
5 licensees, beer and wine licensees, and restaurants in this state;
6 provided:

7 1. Any such winemaker which elects to directly sell its wine to
8 package stores, mixed beverage licensees, beer and wine licensees,
9 and restaurants shall not also use a licensed wholesale distributor
10 as a means of distribution, and shall be required to sell its wines
11 to every package store, mixed beverage licensee, beer and wine
12 licensee, and restaurant licensee who desires to purchase the same,
13 on the same price basis and without discrimination;

14 2. If a winemaker or winery sells directly to a retail package
15 store, mixed beverage licensee, beer and wine licensee, or
16 restaurant, the winemaker shall transport the wine from the
17 winemaker's winery to the premises where the wine is to be delivered
18 only in vehicles owned or leased by the winemaker and not by common
19 or private contract carrier and shall obtain all necessary permits
20 as required by the Oklahoma Alcoholic Beverage Control Act; and

21 3. If the production volume limit applicable to winemakers is
22 ruled to be unconstitutional by a court of competent jurisdiction,
23 then no winemaker shall be permitted to directly sell its wine to
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1 retail package stores, non-package-store retailers, mixed beverage
2 licensees, beer and wine licensees, or restaurants in this state.

3 C. A licensed winemaker or winery may distribute wine produced
4 only by such license holder to a holder of a retail beer license,
5 retail spirits license, mixed beverage license, beer and wine
6 license, caterer's license, special event license, public event
7 license, charitable auction license, or brewpub license. A
8 winemaker or winery shall elect whether to distribute through a
9 licensed distributor or self-distribute in a subject territory;
10 provided, the winemaker or winery license holder shall not elect to
11 do both simultaneously in a subject territory. The election shall
12 be made through notice to the ABLE Commission. Any changes to the
13 election shall require immediate notification to the ABLE Commission
14 before the change in election shall take effect.

15 SECTION 6. This act shall become effective November 1, 2023.

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